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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 CISCO SYSTEMS, INC., and CISCO
13 TECHNOLOGY, INC., a California
14 corporation,

15 Plaintiffs,

16 v.

17 DANNY TSAI, an individual; and
18 DOES 1 through 50, inclusive,

19 Defendants.
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Case No. 5:14-CV-00791

COMPLAINT FOR:

1. **INTENTIONAL MISREPRESENTATION;**
2. **CONCEALMENT;**
3. **NEGLIGENT MISREPRESENTATION**
4. **CONVERSION;**
5. **UNFAIR BUSINESS PRACTICES CAL. BUS. & PROF. CODE §§ 17200 *et seq.*;**
6. **FEDERAL TRADEMARK INFRINGEMENT 15 U.S.C. § 1114;**
7. **COUNTERFEIT OF REGISTERED TRADEMARK 15 U.S.C. § 1114(1)(B);**
8. **UNFAIR COMPETITION 15 U.S.C. § 1125(A)(1)(A); and,**
9. **CALIFORNIA COMMON LAW UNFAIR COMPETITION AND TRADEMARK INFRINGEMENT.**

DEMAND FOR JURY TRIAL

1 Plaintiffs CISCO SYSTEMS, INC. and CISCO TECHNOLOGY, INC.,
2 allege, aver and complain as follows:

3 **INTRODUCTION**

4 1. Plaintiffs CISCO SYSTEMS, INC. and CISCO TECHNOLOGY, INC.
5 (collectively, “CISCO” or “Plaintiffs”) bring this action to recover actual damages
6 of not less than 2.5 million dollars caused by fraudulent misrepresentations made,
7 and unfair business practices and trademark counterfeiting and infringement
8 committed, by Defendant DANNY TSAI (hereinafter referred to as “TSAI”) and
9 DOES 1-50 (collectively “DEFENDANTS”). CISCO seeks restitution and other
10 relief in accordance with applicable law.

11 2. From 2005 through 2012, DEFENDANTS perpetrated a fraud on
12 CISCO as described more fully below, whereby DEFENDANTS engaged in a
13 pattern and practice of making misrepresentations to secure replacement parts from
14 CISCO through Cisco’s service and warranty program. Based on these repeated
15 misrepresentations, DEFENDANTS received Cisco products at no cost, returned
16 counterfeit products to CISCO, and then, Cisco is informed and believes, sold the
17 genuine Cisco products for a significant profit. DEFENDANTS concealed their
18 wrongdoing and prevented Cisco from discovering their fraud by returning
19 counterfeit “Cisco” products through Cisco’s service and warranty program.
20 CISCO has yet to discover the full extent of the DEFENDANTS’ scheme. Based on
21 further investigation and discovery, CISCO will seek to amend this Complaint to
22 add further allegations and causes of action, as may be appropriate.

23 **JURISDICTION**

24 3. This Court has original subject matter jurisdiction over this action
25 pursuant to 28 U.S.C. §§ 1331, 1338 and 15 U.S.C. § 1121 because this action arises
26 under the laws of the United States, and because it involves allegations regarding
27 trademark violations. This Court has supplemental jurisdiction under 28 U.S.C. §§
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1 1338(b) and 1367 for all claims in this Complaint that are based upon state law
 2 because those claims arise from the same controversy as do the claims being made
 3 under federal statute.

4 4. This is a complaint for Trademark Counterfeiting and Unfair
 5 Competition arising under §§ 32 and 43 of the Lanham Act, 15 U.S.C.
 6 §§ 1114(1)(a)(Trademark Counterfeiting and Trademark Infringement) and 1125(a)
 7 (Unfair Competition and False Description); California Common Law Unfair
 8 Competition and Trademark Infringement; Unfair Business Practices (Cal. Bus. &
 9 Prof. C. § 17200, et. seq.); and Fraud (Cal. Civ. C. § 1710).

10 5. This Court has personal jurisdiction over DEFENDANTS because this
 11 action arises from DEFENDANTS' activities that were conducted from locations in
 12 the Los Angeles, California area, which is located within the Central District of
 13 California. CISCO alleges on information and belief that DEFENDANTS are either
 14 residents of California, or that they are actively conducting business in California,
 15 purposefully availing themselves of the benefits and protections of California law.

16 VENUE

17 6. Venue for this action properly lies in the Central District of California
 18 pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving
 19 rise to this action occurred within that district.

20 THE PARTIES

21 7. Plaintiff CISCO SYSTEMS, INC. ("CSI") is and was at all relevant
 22 times a California Corporation, authorized to do business in all counties within the
 23 State of California, with its principal place of business in San Jose, California.
 24 Plaintiff CISCO TECHNOLOGY, INC. ("CTI") is, and at all times mentioned
 25 herein was, a California corporation, with its principal place of business at 170 W.
 26 Tasman Dr., San Jose, California 95134. CTI owns the trademarks that are used by
 27 CISCO in marketing Cisco-branded products.

1 8. CISCO is informed and believes that Defendant TSAI is and was at all
2 relevant times an individual, residing within the County of Riverside, in the State of
3 California.

4 9. The true names and capacities, whether individual, corporate, associate,
5 or otherwise, of the Defendants named herein as DOES 1 through 50, inclusive, are
6 unknown to CISCO which, therefore, sues said Defendants by such fictitious names.
7 CISCO will amend this Complaint to show the true names and capacities of these
8 DOE Defendants when the same shall have been fully and finally ascertained.

9 10. CISCO is informed and believes, and thereon alleges, that each of the
10 defendants designated herein as a DOE is legally responsible, in some manner, for
11 the events and happenings herein referred to, and legally caused damages to CISCO
12 as herein alleged.

13 11. CISCO is informed and believes, and thereon alleges, that
14 DEFENDANTS are citizens and residents of the State of California, and/or are
15 doing business in the State of California, and/or participated in or undertook
16 obligations or rights arising out of the subject events and happenings herein referred
17 to, engaged in actions or omissions, either intentional or negligent, regarding the
18 subject events and happenings herein referred to, and/or benefited unjustly from the
19 efforts, work and goods of CISCO.

20 12. At all times relevant to this action, each Defendant, including those
21 fictitiously named Defendants, was the agent, servant, employee, partner, joint
22 venturer, accomplice, conspirator, alter ego or surety of the other Defendants and
23 was acting within the scope of that agency, employment, partnership, venture, or
24 suretyship with the knowledge and consent or ratification of each of the other
25 Defendants in doing the things alleged in this Complaint.
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FACTUAL ALLEGATIONS**Cisco Background Facts**

13. Founded in 1984 and headquartered in San Jose, California, CISCO is the worldwide leader in networking equipment for information systems. CISCO's business also spans various aspects of the telecommunications industry, including telecommunications networking hardware, advanced telecommunications network design, implementation services, high-end videoconferencing technology and data center technology, among others. CISCO maintains a distribution network through which its products enter the stream of commerce.

14. CISCO has developed a strong name and reputation within the trade and among members of the consuming public as a leading manufacturer of mission-critical networking and telecommunications systems, and it sells these products worldwide. CISCO has invested substantial effort and resources to develop and promote public recognition of the CISCO trade name and of the family of Cisco-related marks. CISCO has used the family of Cisco trademarks to identify goods and services as being genuine CISCO products, and the Cisco marks and name are well-recognized signifiers of CISCO's high quality products and services (the Cisco marks and name are hereinafter referred to as the "Cisco Marks").

15. CTI has caused several Cisco Marks to be registered on the Principal Register of the U.S. Patent and Trademark Office in connection with a range of telecommunications, computer hardware and software products and services, and CTI owns all rights, title, and interest in numerous federal trademark registrations. The registered Cisco Marks include, but are not limited to, the following:

Mark	Registration Number	Registration Date
CISCO	1,542,339	June 6, 1989
CISCO SYSTEMS	1,996,957	August 27, 1996
CISCO SYSTEMS and Design	1,999,660	September 10, 1996
CISCO SYSTEMS and Design	2,116,358	November 25, 1997
CISCO SYSTEMS and Design	2,232,700	March 16, 1999

1	CISCO SYSTEMS and Design	2,488,368	September 11, 2001
2	CISCO	2,498,746	October 16, 2001
3	CISCO SYSTEMS and Design	2,552,361	March 16, 2002
4	CISCO SYSTEMS and Design	2,959,329	June 7, 2005
5	CISCO and Design	3,759,451	March 9, 2010
6	CISCO	3,978,294	June 14, 2011
7	CISCO	4,263,591	December 25, 2012

16. The Cisco Marks are distinctive, having no meaning outside their use by CISCO in its course of business operations and in its advertising to distinguish its products and services. CISCO uses these marks to advertise through a wide variety of media including television, radio, newspapers, magazines, billboards, direct mail, web sites, and in telephone directories across the country. As a result, the Cisco Marks have become well known.

17. Also as a result of CISCO's extensive advertising and promotional efforts and its continuous use of its core Cisco Marks for more than 25 years, CISCO has attained one of the highest levels of brand recognition. As a result of CISCO's longstanding and widespread use and promotion of the Cisco Marks, CISCO's customers worldwide have come to rely upon the Cisco Marks to identify CISCO's high-quality goods and services. Many of CISCO's products are purchased by the U.S. Government, the military, and by other industries, in critical and life-essential applications.

18. Counterfeit CISCO products jeopardize the systems into which they are placed because they do not conform with CISCO's design, specifications, production standards or quality control, and thus lack reliability. Counterfeit products that bear markings similar to, or substantially indistinguishable from, the Cisco Marks provide customers with a false assurance that the products they have purchased are reliable and conform with CISCO's high standards and that they are eligible for certain warranties. When counterfeit products fail, the purchasers can suffer critical losses to their business, infrastructure, and security.

1 19. CISCO's product serial numbers allow CISCO to maintain quality
2 control and product traceability for warranty, service and other business purposes.
3 Specifically, a CISCO product serial number is typically married to or associated
4 with a myriad of product related components or attributes, *i.e.* label serial number,
5 motherboard serial number, daughter card serial number, power supply serial
6 number, product ID, sales order number, and package ID number. If the association
7 between these serial numbers is broken, CISCO's quality control and CISCO's
8 production, warranty, and service standards would be compromised.

9 20. CISCO products that have been modified and/or resold outside of
10 CISCO's approved distribution channels are not normally covered by CISCO
11 warranties or by CISCO service contracts, because CISCO cannot attest to their
12 genuineness or condition. These restrictions also apply to counterfeit products that
13 bear marks similar to, or substantially indistinguishable from, Cisco Marks.

14 21. In addition to selling its products, CISCO also sells optional service
15 contracts, known as "SMARTnet" contracts. Identifying and solving customers'
16 technical problems in a prompt and efficient manner is an important part of
17 CISCO's business model because customers often rely upon CISCO products for
18 mission critical functions. SMARTnet contracts provide customers with enhanced
19 warranty service on their purchased products on an expedited basis.

20 22. On the relatively rare occasions when CISCO parts fail, certain
21 SMARTnet contracts offer customers "Advance Replacement." As the name
22 suggests, "Advance Replacement" provides customers with replacement parts for a
23 malfunctioning CISCO product in advance of the customer returning the defective
24 product to CISCO. This helps customers to avoid long periods of downtime to their
25 networks. The terms and conditions of the SMARTnet contract require, in part, that
26 (1) the product for which advance replacement is sought be validly covered by the
27 SMARTnet contract, and (2) the customer return the allegedly defective product
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1 giving rise to the claim made pursuant to the SMARTnet contract. The customer
2 must pay CISCO the price of the replacement part if the customer fails to return the
3 failed part for which the claim was made.

4 23. SMARTnet service requests, which customers may initiate through a
5 CISCO web interface or by phone, are tracked by CISCO through product serial
6 numbers that correspond to the CISCO part that is covered by the SMARTnet
7 contract. In other words, when SMARTnet customers request service on a CISCO
8 part through CISCO's web interface, they must provide a product serial number
9 before CISCO will service the defective part.

10 24. Additionally, when a customer initiates a SMARTnet service request,
11 information about the customer is captured, along with the description of the
12 claimed defective product. Cisco customers are provided with a Cisco Connection
13 Online ("CCO") user identification and password, which allows the customer to
14 easily identify himself to Cisco, and provides the customer a secure means to
15 communicate with Cisco via the internet regarding a reported problem. The CCO
16 user identification includes a profile, which contains information about the
17 customer's SMARTnet contracts, contact information, and other details.

18 **Defendants Made Repeated Fraudulent Representations To Cisco And**
19 **Obtained Ill-Gotten Profits From Unauthorized Sales Of Cisco Products**

20 25. Beginning sometime in or about April 2005, and continuing through at
21 least October 2012, DEFENDANTS, and others acting on their behalf, conspired to
22 engage, and engaged in, repeated fraud related to CISCO's SMARTnet program and
23 Advance Replacement feature. As described in more detail in the following
24 paragraphs, DEFENDANTS repeatedly initiated SMARTnet service requests in
25 which they misrepresented to CISCO that products covered under a Cisco
26 SMARTnet contract had failed, which induced CISCO to send them valuable
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1 replacement products through the Advanced Replacement program, and which
2 CISCO is informed and believes they then re-sold to third parties for profit.

3 26. DEFENDANTS' fraud was perpetrated through their employment at a
4 number of legitimate companies all located predominantly in the Los Angeles,
5 California area. These companies included IndyMac Federal Bank/OneWest Bank,
6 Comcast Entertainment Group/NBC Universal, Los Angeles World Airport and
7 Demand Media Inc. DEFENDANTS used these companies' Cisco SMARTnet
8 contracts to receive replacement Cisco products, which were fraudulently ordered
9 through the Advanced Replacement program by DEFENDANTS. These companies
10 did not use the replacement Cisco equipment that was sent to them and registered in
11 their names. Rather, DEFENDANTS used these companies and the Cisco
12 SMARTnet contracts they owned to fraudulently obtain CISCO parts at no cost and,
13 CISCO is informed and believes, to immediately re-sell them for their own personal
14 profit.

15 27. CISCO is informed and believes that between September 2004 and
16 March 2007, TSAI was employed by IndyMac Federal Bank in Pasadena, California
17 as a Senior Network Engineer. IndyMac Federal Bank is the owner of several
18 SMARTnet contracts, including Cisco SMARTnet contract numbers 90574410,
19 3585560, 3300774, 3193516, 2157053, 2186758, 2293864, 2393322, 2406401,
20 3175292.

21 28. CISCO is informed and believes that between April 2010 and June
22 2012, TSAI was employed by Comcast Entertainment Group/NBC Universal in Los
23 Angeles, California. Comcast Entertainment Group/NBC Universal and its
24 affiliates, including but not limited to E! Entertainment Television and Golf
25 Channel, are the owners of several SMARTnet contracts, including Cisco
26 SMARTnet contract numbers 90650080, 90650081, 3452914, 1009725.

29. CISCO is informed and believes that between February 2012 and at least March 2012, TSAI was employed by Los Angeles World Airports in Los Angeles, California. Los Angeles World Airports is the owner of several SMARTnet contracts, including Cisco SMARTnet contract number 90348994.

30. CISCO is informed and believes that between September 2012 and at least December 2012, TSAI was employed by Demand Media Inc. in Santa Monica, California in the position of Director Network Engineering. Demand Media, Inc. and its affiliates, including but not limited to eNom, are the owners of several SMARTnet contracts, including Cisco SMARTnet contract numbers 91892299 and 9133245, among others.

Examples Of The Fraudulent And Infringing Activity

31. By way of example, using Cisco SMARTnet contracts owned by Comcast Entertainment Group/ NBC Universal (“Comcast”), DEFENDANTS made multiple false SMARTnet service requests through CISCO’s website. Specifically, on June 8, 2010, using COO user identification “autobot130” associated with user Danny Tsai and the email address dtsai@comcastnets.com, DEFENDANTS falsely and fraudulently represented to CISCO through Service Request number (“SR#”) 614582159 and SMARTnet contract number 3452914 (on behalf of E! Entertainment Television) that two Cisco NPE-G1 products (list price of \$15,000 each) needed replacement through the Advanced Replacement program. On June 8, 2010 at 10:54 A.M., “Autobot130” wrote, “Power cycle occurred [sic] on chassis in remote facility. Remote hands from 3rd party vendor was used to troubleshoot from console. They report that the console output is not displaying any text in the terminal. I suspect the NPEG1 module has gone bad. The hardware was in service for several years without issues.” Thereafter at 11:10 A.M., “Autobot130” claimed, “The problem occurred when I attempted to upgrade service provider IOS code a few days ago, this chassis has been down for some time....Right now the system is non-operational.” On or

1 about June 15, 2010 at 5:47 A.M, CISCO issued a Return Material Authorization
 2 (“RMA”) (RMA #83344867), pursuant to which it authorized the shipment of
 3 replacement parts to DEFENDANTS. DEFENDANTS’ representations were false.
 4 None of these products were in need of service or replacement. Instead,
 5 DEFENDANTS sought Cisco products not for their own use but, CISCO is informed
 6 and believes, to sell to third parties for profit. DEFENDANTS were aware of the
 7 falsity of their representations and made these representations with the intent to cause
 8 CISCO to rely on them and to deceive CISCO and to induce CISCO to send
 9 DEFENDANTS replacement parts.

10 32. CISCO reasonably relied on DEFENDANTS’ misrepresentations, and
 11 acting on that reliance, CISCO, in fact, did send two replacement Cisco NPE-G1
 12 products (with product serial numbers 36978576 and 35987770) on June 15, 2010 to
 13 E! Entertainment Television, 5750 Wilshire Blvd., Los Angeles, California, 90036.
 14 The value of the products shipped is \$26,397. But for DEFENDANTS’
 15 representations, CISCO would not have sent these replacement products, to which
 16 DEFENDANTS were not entitled, to DEFENDANTS.

17 33. On July 21, 2010, CISCO received a customer return for this RMA,
 18 which appeared to contain two Cisco NPE-G1 products (with product serial
 19 numbers SAL35343692 and SAL72974893). A Cisco engineer later examined these
 20 products and determined that those returned products are counterfeit. These
 21 counterfeit parts and/or their packaging contained markings that appeared
 22 indistinguishable from Cisco trademarks that are registered with the U.S. Patent and
 23 Trademark Office (“USPTO”).

24 34. On November 27, 2012, Comcast contacted CISCO and confirmed,
 25 through a diagnostic query, that the replacement serialized products CISCO sent to
 26 Comcast on June 15, 2010 do not reside in its network.

35. In another example, on May 18, 2010, using COO user identification
 “autobot130” associated with user Danny Tsai and the email address
 dtsai@comcastnets.com, DEFENDANTS falsely and fraudulently represented to
 CISCO through SR# 614423781 and SMARTnet contract number 3452914 (on
 behalf of E! Entertainment Television) that five Cisco products, a WS-SUP720-
 3BXL (list price of \$40,000), a WS-X6704-10GE (list price of \$20,000), two WS-
 X6724-SFP (list price of \$15,000), and a WS-X6748-GE-TX (list price of \$15,000),
 needed replacement through the Advanced Replacement program. On May 19,
 2010 at 1:17 A.M., “Autobot130” claimed: “Receiving the following errors on the
 C6509 chassis. The chassis has already been replaced once 30 days ago. Also one
 of the WS-X6748-GE-TX linecards has also been recently replaced as well. But
 problem still persists. Need further assistance into troubleshooting.” Thereafter on
 June 25, 2010 at 9:33 A.M., “Autobot130” wrote: “Reseating modules as sent in
 previous email did not resolve. I am still receiving the following errors. . . I would
 of preferred that there was HW replacement on hand that may have resolved this in
 one single maintenance window.” On or about June 29, 2010 at 9:33 A.M, CISCO
 issued a RMA #83367167, pursuant to which it authorized the shipment of
 replacement parts to DEFENDANTS. DEFENDANTS’ representations were false.
 None of these products were in need of service or replacement. Instead,
 DEFENDANTS sought Cisco products not for their own use but, CISCO is
 informed and believes, to sell to third parties for profit. DEFENDANTS were aware
 of the falsity of their representations and made these representations with the intent
 to cause CISCO to rely on them and to deceive CISCO and to induce CISCO to send
 DEFENDANTS replacement parts.

36. CISCO reasonably relied on DEFENDANTS’ misrepresentations, and
 acting on that reliance, CISCO, in fact, did send the following replacement Cisco
 products: WS-SUP720-3BXL (with product serial number SAD082800NA), WS-

1 X6704-10GE (with product serial number SAL1206FBZN), two WS-X6724-SFP
 2 (with product serial numbers SAD091500LE and SAL1312M2YY), and a
 3 WS-X6748-GE-TX (with product serial number SAL1413E024) on June 29, 2010
 4 to Comcast Cable Communications, 5750 Wilshire Blvd., Los Angeles, California,
 5 90036. The value of the products shipped is \$84,230. But for DEFENDANTS'
 6 representations, CISCO would not have sent these replacement products, to which
 7 DEFENDANTS were not entitled, to DEFENDANTS.

8 37. On July 29, 2010 and August 6, 2010, CISCO received customer returns
 9 for this RMA, which appeared to contain one Cisco WS-SUP720-3BXL product
 10 (labeled with serial number SAL10381YSA), one Cisco WS-X6704-10GE product
 11 (labeled with serial number SAL1210HU1Q), two Cisco WS-X6724-SFP products
 12 (labeled with serial numbers SAL1212JNNW and SAL1211JFD4), and one Cisco
 13 WS-X6748-GE-TX product (labeled with serial number SAL12405QCG). A Cisco
 14 engineer later examined these products and determined that those returned products
 15 are counterfeit in that the serial numbers and part numbers have been materially
 16 altered and modified without CISCO's permission.

17 38. On November 27, 2012, Comcast contacted CISCO and confirmed,
 18 through a diagnostic query, that the replacement serialized products CISCO sent to
 19 Comcast on June 29, 2010 do not reside in its network.

20 39. As an additional example, DEFENDANTS, using Cisco SMARTnet
 21 contracts owned by IndyMac Federal Bank/OneWest Bank ("IndyMac"), made
 22 multiple false SMARTnet service claims through CISCO's website. Specifically,
 23 on October 29, 2008, using COO user identification "autobot130" associated with
 24 user Danny Tsai and the email address dtsai@mac.com, DEFENDANTS falsely and
 25 fraudulently misrepresented to CISCO through SR# 609927421 and SMARTnet
 26 contract number 3193516 (on behalf of IndyMac Bank) that two Cisco WS-X6748-
 27 GE-TX products (list price of \$15,000 each) needed replacement through the
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1 Advanced Replacement program. On June 29, 2008 at 8:36 A.M., “Autobot130”
 2 claimed: “Upon bootup of the 6500 switch, the error below started appearing on
 3 startup. Checking ‘show module’ status shows that the module is offline due to
 4 power failure. The module used to work in the past. Local facility power outage
 5 may have triggered this problem as it did not occur prior to a power shutdown.
 6 Requesting RMA, appears to have failed components.” On or about October 31,
 7 2008 at 4:35 A.M, CISCO issued a RMA #82542911, pursuant to which it
 8 authorized the shipment of replacement parts to DEFENDANTS. DEFENDANTS’
 9 representations were false. None of these products were in need of service or
 10 replacement. Instead, DEFENDANTS sought Cisco products not for their own use
 11 but, CISCO is informed and believes, to sell to third parties for profit.
 12 DEFENDANTS were aware of the falsity of their representations and made these
 13 representations with the intent to cause CISCO to rely on them and to deceive
 14 CISCO and to induce CISCO to send DEFENDANTS replacement parts.

15 40. CISCO reasonably relied on DEFENDANTS’ misrepresentations, and
 16 acting on that reliance, CISCO, in fact, did send two Cisco WS-X6748-GE-TX
 17 replacement products (bearing serial numbers SAD09110A9P and SAL1003ASB0)
 18 on October 31 2008, to IndyMac Bank, 155 N Lake Ave 7th Floor, Pasadena, CA
 19 91101. The value of the products shipped is \$23,076. But for DEFENDANTS’
 20 representations, CISCO would not have sent these replacement products, to which
 21 DEFENDANTS were not entitled, to DEFENDANTS.

22 41. On December 23, 2008, CISCO received a customer return for this
 23 RMA, which appeared to contain a Cisco WS-X6748-GE-TX part bearing serial
 24 number SAL09148TEB. However, on July 5, 2005, over three years earlier, a new
 25 Cisco product WS-X6748-GE-TX bearing serial number SAL09148TEB was
 26 shipped on an RMA to the University of Mississippi. From 2006 through 2008, the
 27 University opened multiple SMARTnet service requests referencing this product’s
 28

1 serial number. And from 2009 through 2011, after DEFENDANTS claimed to have
 2 returned a part bearing serial number SAL09148TEB, the University opened
 3 multiple SR's referencing this same serial number. On December 19, 2011, CISCO
 4 contacted the University regarding this product. The University confirmed, through
 5 a diagnostic query, that this serialized product resides in its network.
 6 DEFENDANTS' representations were false. None of these products were in need
 7 of service or replacement. Instead, DEFENDANTS sought Cisco products not for
 8 their own use but, CISCO is informed and believes, to sell to third parties for profit.
 9 DEFENDANTS were aware of the falsity of their representations and made these
 10 representations with the intent to cause CISCO to rely on them and to deceive
 11 CISCO and to induce CISCO to send DEFENDANTS replacement parts.

12 42. In another example, using Cisco SMARTnet contracts owned by Los
 13 Angeles World Airports ("LAWA"), DEFENDANTS made multiple false
 14 SMARTnet service claims through CISCO's website. Specifically, on February 29,
 15 2012, using COO user identification dtsai@lawa.org associated with user Danny
 16 Tsai, DEFENDANTS falsely and fraudulently represented to CISCO through SR #
 17 620871203 and SMARTnet contract number 90348994 (on behalf of LAWA) that a
 18 Cisco WS-X6708-10G-3C product (list price of \$37,500) needed replacement
 19 through the Advanced Replacement program. On February 29, 2012 at 3:48 A.M.,
 20 COO user ID dtsai@lawa.org claimed: "Receiving the following error message in
 21 syslog on one of the 8-port 10G linecards of c6513. Specifically on 10Gig port 7. I
 22 have reseated the X2 optic and tried different Cisco brand X2 optics. Tested with
 23 X2-10GB-SR, and X2-10GB-LR, and X2-10GB-LX4. No luck getting this
 24 working." On or about February 29, 2012 at 6:41 A.M, CISCO issued a RMA
 25 #84308305, pursuant to which it authorized the shipment of replacement parts to
 26 DEFENDANTS. DEFENDANTS' representations were false. None of these
 27 products were in need of service or replacement. Instead, DEFENDANTS sought
 28

1 Cisco products not for their own use but, CISCO is informed and believes, to sell to
 2 third parties for profit. DEFENDANTS were aware of the falsity of their
 3 representations and made these representations with the intent to cause CISCO to
 4 rely on them and to deceive CISCO and to induce CISCO to send DEFENDANTS
 5 replacement parts.

6 43. CISCO reasonably relied on DEFENDANTS' misrepresentations, and
 7 acting on that reliance, CISCO, in fact, did send a replacement Cisco WS-X6708-
 8 10G-3C product (with product serial number SAL1231ZBA8) on February 29, 2012
 9 to Los Angeles World Airports, 6053 W. Century Blvd., Suite 200, Los Angeles,
 10 California, 90054. The value of the products shipped is \$28,175. But for
 11 DEFENDANTS' representations, CISCO would not have sent these replacement
 12 products, to which DEFENDANTS were not entitled, to DEFENDANTS.

13 44. On March 12, 2012, Cisco received a customer return for this RMA,
 14 which appeared to contain a Cisco WS-X6708-10GE product (with product serial
 15 number SAL1339ZHFU). A Cisco engineer later examined this product and
 16 determined that the returned product is counterfeit in that the serial numbers and
 17 part numbers have been materially altered and parts of the product have been
 18 replaced with non-Cisco parts without CISCO's permission.

19 45. In another example, using Cisco SMARTnet contracts owned by
 20 Demand Media Inc., DEFENDANTS made multiple false SMARTnet service
 21 claims through CISCO's website. Specifically, on August 16, 2012, using COO
 22 User dtsai@demandmedia.com, associated with user Danny Tsai, DEFENDANTS
 23 falsely and fraudulently represented to CISCO through SR# 622801577 and
 24 SMARTnet contract number 91892299 (on behalf of Demand Media Inc.) that a
 25 Cisco WS-SUP720-3BXL product (list price of \$40,000) needed replacement
 26 through the Advanced Replacement program. On August 16, 2012 at 12:04 A.M.,
 27 COO User dtsai@demandmedia.com claimed: "Receiving the following error on
 28

1 supervisor. Please see below. I have received this error and the module is rebooting
 2 on its own every 2-3 minutes after completing the boot-up process. I've attempted
 3 to retrieve the crash logs but it is constantly rebooting on its own. This was the
 4 standby module in a redundant chassis and was working for several months until
 5 recently." On or around August 21, 2012 at 6:14 A.M., CISCO issued a RMA
 6 #84611324, pursuant to which it authorized the shipment of replacement Cisco parts
 7 to DEFENDANTS. DEFENDANTS' representations were false. None of these
 8 products were in need of service or replacement. Instead, DEFENDANTS sought
 9 Cisco products not for their own use but, CISCO is informed and believes, to sell to
 10 third parties for profit. DEFENDANTS were aware of the falsity of their
 11 representations and made these representations with the intent to cause CISCO to
 12 rely on them and to deceive CISCO and to induce CISCO to send DEFENDANTS
 13 replacement parts.

14 46. CISCO reasonably relied on DEFENDANTS' misrepresentations, and
 15 acting on that reliance, CISCO, in fact, did send a replacement Cisco WS-SUP720-
 16 3BXL product (with product serial number SAL1629HBAJ) on August 21, 2012 to
 17 Demand Media, 1299 Ocean Ave., Suite 500, Santa Monica, California 90401. The
 18 value of the products shipped is \$40,000. But for DEFENDANTS' representations,
 19 CISCO would not have sent these replacement products, to which DEFENDANTS
 20 were not entitled, to DEFENDANTS.

21 47. On or about March 12, 2012, Cisco received a customer return for this
 22 RMA, which appeared to contain a Cisco WS-SUP720-3BXL product (with product
 23 serial number SAL1415F61A). A Cisco engineer later examined this product and
 24 determined that the returned product is counterfeit in that the serial numbers and
 25 part numbers have been materially altered and parts of the product have been
 26 replaced with non-Cisco parts without CISCO's permission.

48. From approximately April 2005 through October 2012, DEFENDANTS made approximately 156 SMARTnet service requests, in many instances using the same SMARTnet contract number.

49. Further, Cisco products sent to DEFENDANTS as replacement products as a result of SMARTnet service requests have been located with other end users shortly after they were shipped to DEFENDANTS. Such activity further demonstrates the intention of DEFENDANTS to use SMARTnet service requests not as a legitimate way to obtain a replacement product for a malfunctioning product, but rather to obtain fraudulently an expensive Cisco part, under false pretenses, at no cost, for immediate re-sale. Examples of instances of Cisco products sent to DEFENDANTS ending up with third parties are as follows:

a) In December 2010, a company in Virginia sought service for a Cisco WS-X6748-GE-TX switch (serial number SAD120306EX) under a SMARTnet contract. The company provided a diagnostic output “show module” readout to the Cisco technician, indicating the product was actually in use in their network. According to Cisco’s records, that product had been shipped on April 26, 2010 to Comcast at E! Entertainment Television, 5750 Wilshire Blvd., Los Angeles, California, 90036, as a result of a SMARTnet service request made by DEFENDANTS on April 16, 2010. In August 2011, CISCO confirmed that this serialized part was present and running in the Virginia company’s network.

b) A company in Texas registered two Cisco WS-SUP720-3BXL parts (serial numbers SAL135278NY and SAD110400BN) under a SMARTnet contract on February 11, 2011 and July 17, 2010 respectively. That product had been shipped on July 2, 2010 to Comcast Entertainment Group, 5750 Wilshire Blvd., Los Angeles, California, 90036, as a result of a SMARTnet service request made by DEFENDANTS on June 25, 2010. In December 2011, CISCO confirmed that these serialized parts were present and running in the Texas company’s network.

50. After submitting SMARTnet service requests and receiving replacement CISCO products, DEFENDANTS returned counterfeit products instead of the claimed defective products in a deliberate (and for awhile successful) attempt to conceal their scheme.

Loss to Cisco Related to Defendants’ Fraud Scheme

1 51. The Global List Price (“GLP”) for the Cisco products delivered to
2 DEFENDANTS related to this scheme is at least \$2,547,164.

3 **FIRST CAUSE OF ACTION**
4 **Intentional Misrepresentation**
5 **(Cal. Civ. Code §§ 1709, 1710(1))**

6 52. CISCO incorporates the preceding paragraphs of this Complaint as if
7 fully set forth herein.

8 53. Beginning sometime in or about April 2005, and continuing through at
9 least October 2012, DEFENDANTS, and others acting on their behalf, conspired to,
10 and repeatedly initiated, SMARTnet service requests in which they misrepresented
11 to CISCO that products covered under a Cisco SMARTnet contract had failed,
12 which induced CISCO to send them valuable replacement products through the
13 Advanced Replacement program, and which CISCO is informed and believes they
14 then re-sold to third parties for profit.

15 54. DEFENDANTS’ representations identified herein regarding
16 malfunctioning Cisco parts, which induced CISCO to send DEFENDANTS working
17 Cisco parts, were false. CISCO is informed and believes, and thereon alleges, that
18 the Cisco products that DEFENDANTS claimed were defective when making
19 SMARTnet service requests to receive replacement Cisco parts were not in fact
20 defective. Rather, DEFENDANTS made such representations in order to acquire
21 Cisco parts that they could then re-sell for profit.

22 55. The examples of DEFENDANTS’ fraud scheme, described above,
23 demonstrate how DEFENDANTS’ fraud was perpetrated through their employment
24 at a number of legitimate companies, including IndyMac Federal Bank/OneWest
25 Bank, Comcast Entertainment Group/NBC Universal, Los Angeles World Airport
26 and Demand Media Inc. DEFENDANTS used these companies’ Cisco SMARTnet
27 contracts to receive replacement Cisco products, which were fraudulently ordered
28 through the Advanced Replacement program by DEFENDANTS. These companies

1 did not use the replacement Cisco equipment that was sent to them and registered in
2 their names. Rather, DEFENDANTS used these companies and the Cisco
3 SMARTnet contracts they owned to fraudulently obtain Cisco parts at no cost and,
4 CISCO is informed and believes, to immediately re-sell them.

5 56. The conduct described in this Complaint, including the three
6 immediately preceding paragraphs, constituted misrepresentations of presently
7 existing fact. CISCO reasonably and justifiably relied on those misrepresentations
8 and thereby was induced to ship working replacement parts to DEFENDANTS.

9 57. DEFENDANTS' representations were false. Upon information and
10 belief, none of these products were in need of service or replacement and none of
11 the genuine products were in DEFENDANTS' possession. Instead, DEFENDANTS
12 sought Cisco products not for their own use but, CISCO is informed and believes, to
13 sell to third parties for profit. DEFENDANTS were aware of the falsity of their
14 representations and made these representations with the intent to cause CISCO to
15 rely on them and to deceive CISCO and to induce CISCO to send DEFENDANTS
16 replacement parts. DEFENDANTS concealed their wrongdoing by returning
17 counterfeit "Cisco" products to CISCO instead of the claimed defective Cisco
18 products.

19 58. CISCO reasonably relied on DEFENDANTS' misrepresentations, and
20 acting on that reliance, CISCO, in fact, sent replacement products. But for
21 DEFENDANTS' representations, CISCO would not have sent these replacement
22 products, to which DEFENDANTS were not entitled, to DEFENDANTS. As a
23 direct and proximate result of DEFENDANTS' fraudulent conduct as alleged
24 herein, CISCO was induced to provide, and did in fact provide, replacement Cisco
25 product to DEFENDANTS, and thereby lost valuable products that were shipped to
26 DEFENDANTS, but which did not rightfully belong to DEFENDANTS. But for
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DEFENDANTS' representations, CISCO would not have shipped any working parts to DEFENDANTS pursuant to DEFENDANTS' SMARTnet service requests.

59. DEFENDANTS conspired to commit the acts described in this First Cause of Action, in that all of these DEFENDANTS acted together with a common purpose to fraudulently procure products through the Advance Replacement program from CISCO through exploitation of SMARTnet contracts. DEFENDANTS were each aware of the common plan to obtain products from CISCO by committing these acts. Further, DEFENDANTS agreed to commit these acts and intended that these acts should be committed. DEFENDANTS cooperated, or agreed to cooperate, in committing these acts, so that their scheme to fraudulently obtain Cisco products through the Advance Replacement program could be ongoing. DEFENDANTS committed overt acts in furtherance of this conspiracy until, at least, October 2012.

60. As a direct and proximate result of DEFENDANTS' fraudulent conduct as alleged herein, CISCO has been damaged in the approximate amount of at least \$2,547,164.

61. The aforementioned fraudulent representations and conduct by DEFENDANTS were culpable, willful, wanton, malicious, oppressive, demonstrated such want of care and indifference to consequences, and were undertaken with the intent to deceive, so as to justify an award of exemplary and punitive damages to CISCO.

SECOND CAUSE OF ACTION
Concealment
(Cal. Civ. Code §§ 1709, 1710(3))

62. CISCO incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

63. At all times during which the allegations described within this Second Cause of Action occurred, DEFENDANTS were obligated to report accurately and

1 truthfully to CISCO facts regarding products for which DEFENDANTS were
2 seeking replacement parts under SMARTnet contracts.

3 64. From approximately April 2005 through October 2012, DEFENDANTS
4 made approximately 156 SMARTnet service requests, in many instances using the
5 same SMARTnet contract number. TSAI conspired with other DEFENDANTS to
6 conceal facts from CISCO about the truth of the condition of the products under the
7 SMARTnet contracts and the subsequent SMARTnet service requests.

8 65. DEFENDANTS' representations regarding the SMARTnet service
9 requests discussed above were false. DEFENDANTS actively concealed from
10 CISCO important facts, including but not limited to, that none of these products
11 were in need of service or replacement and that DEFENDANTS did not possess the
12 genuine products. Instead, DEFENDANTS sought CISCO products not for their
13 own use but, Cisco is informed and believes, to sell to third parties for profit.

14 66. DEFENDANTS were aware of the falsity of their representations and
15 made these representations with the intent to cause CISCO to rely on them and to
16 deceive CISCO and to induce CISCO to send DEFENDANTS replacement parts.
17 DEFENDANTS concealed their wrongdoing by returning counterfeit "Cisco"
18 products instead of the claimed defective Cisco products.

19 67. CISCO reasonably relied on DEFENDANTS' representations, and
20 acting on that reliance, CISCO, in fact, did send replacement products to
21 DEFENDANTS. But for DEFENDANTS' representations and concealment of the
22 truth, CISCO would not have sent these replacement products, to which
23 DEFENDANTS were not entitled, to DEFENDANTS.

24 68. As a direct and proximate result of DEFENDANTS' concealment as
25 herein alleged, CISCO has lost valuable products that were shipped to
26 DEFENDANTS, but which did not rightfully belong to DEFENDANTS. But for
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1 DEFENDANTS' concealment, CISCO would not have shipped any working parts to
 2 DEFENDANTS pursuant to DEFENDANTS' SMARTnet service requests.

3 69. The aforementioned fraudulent representations and conduct by the
 4 DEFENDANTS were culpable, willful, wanton, malicious, oppressive,
 5 demonstrated such want of care and indifference to consequences, and were
 6 undertaken with the intent to deceive, so as to justify an award of exemplary and
 7 punitive damages to CISCO.

8 **THIRD CAUSE OF ACTION**
 9 **Negligent Misrepresentation**
(Cal. Civ. Code §§ 1709, 1710(2))

10 70. CISCO incorporates the preceding paragraphs of this Complaint as if
 11 fully set forth herein.

12 71. The representations made by DEFENDANTS to CISCO in which they
 13 claimed through the SMARTnet program that certain Cisco parts were purportedly
 14 malfunctioning and in need of replacement were false.

15 72. DEFENDANTS had no reasonable grounds for believing that the
 16 representations to CISCO, alleged herein, in which they claimed through the
 17 SMARTnet program that certain CISCO parts were purportedly and in need of
 18 replacement were true, in that DEFENDANTS knew that the parts for which they
 19 were making SMARTnet service requests were functioning properly and not in need
 20 of replacement.

21 73. DEFENDANTS made the representations with the intent to induce
 22 CISCO to send them Cisco parts, to which they were not entitled, in order to sell
 23 such Cisco parts to third parties for a profit.

24 74. CISCO, at the time these misrepresentations were made by
 25 DEFENDANTS, and at the time CISCO took the actions alleged herein, was
 26 ignorant of the falsity of the representations and believed them to be true. In
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1 reasonable reliance on DEFENDANTS' representations, CISCO was induced to
 2 send, and did in fact send, Cisco products to DEFENDANTS.

3 75. As a proximate result of DEFENDANTS' fraudulent and/or negligent
 4 conduct, CISCO has lost valuable products that were shipped to DEFENDANTS,
 5 but which did not rightfully belong to DEFENDANTS. But for DEFENDANTS'
 6 negligent conduct, CISCO would not have shipped any working parts to
 7 DEFENDANTS pursuant to DEFENDANTS' SMARTnet service requests.

8 76. As a direct and proximate result of DEFENDANTS' fraudulent conduct
 9 as herein alleged, CISCO was induced to provide, and did in fact provide, working
 10 replacement product to DEFENDANTS such that DEFENDANTS obtained
 11 products at no cost to them, and CISCO, therefore, has been damaged by at least that
 12 amount.

13 **FOURTH CAUSE OF ACTION**
 14 **Conversion**
 15 **(Common Law)**

16 77. CISCO incorporates the preceding paragraphs of this Complaint as if
 17 fully set forth herein.

18 78. Between April 2005 and October 2012, DEFENDANTS intentionally
 19 took possession of at least 154 Cisco parts by wrongful acts, as described herein. As
 20 a result of DEFENDANTS' wrongful acts, CISCO did not consent to
 21 DEFENDANTS' possession of these parts. DEFENDANTS fraudulently concealed
 22 these acts in a manner that prevented CISCO from discovering them until CISCO
 23 discovered the parts DEFENDANTS returned were counterfeit and that
 24 DEFENDANTS did not have the right to take possession of the replacement
 25 products.

26 79. As a proximate result of DEFENDANTS' conversion, CISCO has lost
 27 valuable products that were shipped to DEFENDANTS, but which did not rightfully
 28 belong to DEFENDANTS. But for DEFENDANTS' conversion, CISCO would not

1 have shipped any working parts to DEFENDANTS pursuant to DEFENDANTS’
 2 SMARTnet service requests.

3 80. But for DEFENDANTS’ acts of conversion, CISCO would have
 4 maintained control of their products and would have profited from the sale of them,
 5 or otherwise derived value from possessing them.

6 81. DEFENDANTS’ actions have caused and, unless restrained by this
 7 Court, will continue to cause irreparable injury to CISCO.

8 **FIFTH CAUSE OF ACTION**
 9 **Unfair Business Practices,**
(Cal. Bus. & Prof. Code § 17200 et seq.)

10 82. CISCO incorporates the preceding paragraphs of this Complaint as if
 11 fully set forth herein.

12 83. California Business and Professions Code § 17200, et seq., prohibits
 13 acts of unfair competition, which means any “unlawful, unfair, or fraudulent
 14 business act or practice.”

15 84. In pursuing the above-described schemes, DEFENDANTS have
 16 engaged in unlawful business acts or practices by committing the above described
 17 acts, including false representation, conversion, trademark infringement and the
 18 other acts and practices alleged herein, in an effort to gain an unfair competitive
 19 advantage and a windfall in the marketplace.

20 85. CISCO alleges upon information and belief that DEFENDANTS have
 21 continuously misrepresented facts related to claims of defective products in order to
 22 obtain Cisco products, and then to sell those fraudulently obtained products.

23 86. DEFENDANTS’ practices were unlawful, unfair, and/or fraudulent, and
 24 constitute unlawful, unfair, and/or fraudulent competition as defined by Cal. Bus. &
 25 Prof. C. § 17200, et seq.

26 87. CISCO seeks full restitution by DEFENDANTS necessary and
 27 according to proof to restore any and all property and monies, including interest,
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1 acquired by Defendants, and all costs incurred by CISCO as a result of
 2 DEFENDANTS' unfair business practices.

3 88. DEFENDANTS' actions have caused and, unless restrained by this
 4 Court, will continue to cause irreparable injury to CISCO.

5 89. CISCO has no other adequate remedy at law for DEFENDANTS' unfair
 6 competition and business practices.

7 **SIXTH CAUSE OF ACTION**
 8 **(Federal Trademark Infringement**
 9 **15 U.S.C. § 1114)**

10 90. CISCO incorporates the preceding paragraphs of this Complaint as if
 11 fully set forth herein.

12 91. DEFENDANTS have used in commerce, without authorization,
 13 CISCO's registered marks, in connection with the exchange and distribution of
 14 computer networking and telecommunications equipment, in a manner that is likely
 15 to cause confusion, mistake, or to deceive. DEFENDANTS acted without authority
 16 in using these Cisco Marks.

17 92. DEFENDANTS' unauthorized use of CISCO's Marks falsely represents
 18 DEFENDANTS' counterfeit products as emanating from or being authorized by
 19 CISCO, and places beyond CISCO's control the quality of products bearing Cisco
 20 Marks.

21 93. The DEFENDANTS' unauthorized use of CISCO's federally registered
 22 marks and/or imitations thereof is likely to cause, and has in fact caused, confusion,
 23 and the public is likely to believe that CISCO approved of DEFENDANTS as a
 24 distributor of CISCO goods. Furthermore, the public is likely to believe that CISCO
 25 maintained control of the goods.

26 94. DEFENDANTS' infringing actions were committed fraudulently,
 27 willfully, and in bad faith, with knowledge of CISCO's exclusive rights to and
 28

1 goodwill in the Cisco Marks, or with willful blindness to the same, and with the
 2 intent to cause confusion, to cause mistake and/or to deceive.

3 95. As a result of the DEFENDANTS' trademark infringement, CISCO has
 4 suffered and will continue to suffer substantial and irreparable injury, loss, and
 5 damages to its right in and to the Cisco Marks, and the goodwill associated
 6 therewith, for which they have no adequate remedy at law.

7 96. Due to the acts of the DEFENDANTS, CISCO has suffered and will
 8 continue to suffer loss of income, profits, and valuable business opportunities, and,
 9 if not restrained, DEFENDANTS will have unfairly derived and will continue to
 10 unfairly derive income, profits and business opportunities as a result of its acts of
 11 infringement.

12 97. As the acts alleged herein constitute infringement of the Cisco Marks
 13 under 15 U.S.C. § 1114, and as CISCO has no adequate remedy at law, CISCO is
 14 entitled to injunctive relief as well as to monetary damages and other remedies as
 15 provided by 15 U.S.C. §§ 1116, 1117, and 1118, including treble damages,
 16 reasonable attorney's fees and prejudgment interest, and/or statutory damages
 17 provided by 15 U.S.C. § 1125.

18 **SEVENTH CAUSE OF ACTION**
 19 **(Counterfeit of Registered Trademark**
 20 **15 U.S.C. § 1114)**

21 98. CISCO incorporates the preceding paragraphs of this Complaint as if
 22 fully set forth herein.

23 99. CISCO is informed and believes, and on that basis alleges, that
 24 DEFENDANTS distributed goods or services that bore marks that are non-genuine,
 25 which are identical with, or substantially indistinguishable from, CISCO's registered
 26 Cisco Marks.

27 100. The alterations on DEFENDANTS' counterfeit "Cisco" products are
 28 likely to confuse the public to believe that CISCO authorized the counterfeit

1 products. As such, the alterations on DEFENDANTS' counterfeit "Cisco" products
 2 render them materially different from Cisco's products authorized for sale in the
 3 U.S.

4 101. Cisco Marks are registered on the Principal Register of the U.S. Patent
 5 and Trademark Office for the same goods or services in connection with those
 6 goods or services offered by DEFENDANTS.

7 102. DEFENDANTS are not, and have never been, authorized by CISCO to
 8 use Cisco Marks on or in connection with the goods or services DEFENDANTS
 9 have distributed.

10 103. DEFENDANTS have therefore used a counterfeit mark, as defined
 11 under 15 U.S.C. § 1116(d) and/or 15 U.S.C. § 1127, in connection with the sale,
 12 offering for sale, or distribution of goods or services in violation of 15 U.S.C. §
 13 1114(1).

14 104. DEFENDANTS' use of counterfeit Cisco Marks results in substantial
 15 injury, loss, property damage, and damages to CISCO's rights in and to Cisco
 16 Marks, and the goodwill associated therewith.

17 105. These infringing acts have occurred within California and in interstate
 18 commerce and have caused, and unless restrained by this Court will continue to
 19 cause, serious and irreparable injury to CISCO, for which CISCO has no adequate
 20 remedy at law.

21 106. CISCO is entitled to statutory damages, as provided by 15 U.S.C. §
 22 1117(c).

EIGHTH CAUSE OF ACTION
(Unfair Competition
15 U.S.C. § 1125(a)(1)(A))

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 25 107. CISCO incorporates the preceding paragraphs of this Complaint as if
 26 fully set forth herein.

108. DEFENDANTS did without authorization make false designations of origin, false or misleading descriptions of fact, and/or false or misleading representations of fact, which were and are likely to cause confusion, or to cause mistake, or to deceive customers as to the affiliation, connection, or association of DEFENDANTS with CISCO, and/or as to the origin, sponsorship, or approval of the DEFENDANTS' goods or services, or commercial activities.

109. CISCO alleges on information and belief that DEFENDANTS' acts have been committed with knowledge of CISCO's exclusive common law rights and goodwill in the Cisco Marks, as well as with bad faith and the intent to cause confusion, mistake and/or to deceive.

110. CISCO has suffered, and, if the DEFENDANTS are not enjoined from its wrongful acts of passing off and acts of making false designations or origin, false or misleading descriptions of fact, and false or misleading representations of fact as described herein, will continue to suffer, great and irreparable injury, loss, and damages to its rights in and to the Cisco Marks and the goodwill associated therewith for which it has no adequate remedy at law.

111. As a result of the DEFENDANTS' wrongful acts, CISCO has suffered and will continue to suffer loss of income, profits, and valuable business opportunities, and, if not restrained, DEFENDANTS will have unfairly derived and will continue to unfairly derive income, profits and business opportunities as a result of its wrongful acts.

112. As the acts alleged herein violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and as CISCO has no adequate remedy at law, CISCO is entitled to injunctive relief as well as monetary damages, and other remedies provided by 15 U.S.C. §§ 1116, 1117, and 1118, including treble damages, a reasonable attorney's fee and prejudgment interest, and/or statutory damages provided by 15 U.S.C. § 1125.

NINTH CAUSE OF ACTION

(California Common Law Unfair Competition and Trademark Infringement)

113. CISCO incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

114. DEFENDANTS' use of the Cisco Marks in connection with the marketing and sale of counterfeit and unauthorized Cisco products is likely to cause confusion, mistake, and deception as to whether these products are approved of, sponsored by, or somehow affiliated with CISCO.

115. DEFENDANTS' actions constitute common law unfair competition and trademark infringement and have caused CISCO damages in an amount to be determined at trial.

116. DEFENDANTS' actions have caused and, unless restrained by this Court, will continue to cause irreparable injury to CISCO.

117. CISCO has no adequate remedy at law for DEFENDANTS' unfair competition and trademark infringement.

118. DEFENDANTS' willful acts of common law trademark infringement constitute fraud, oppression, and malice. Accordingly, CISCO is entitled to exemplary damages pursuant to California Civil Code § 3294(a).

PRAYER FOR RELIEF

WHEREFORE, CISCO prays for judgment against the DEFENDANTS as follows:

A. That the Court find that DEFENDANTS directly infringed and counterfeited the Cisco Marks, and engaged in unfair competition through use of their counterfeit and/or infringing marks;

B. That the Court find that DEFENDANTS' trademark infringement and counterfeiting were knowing and willful and committed with bad faith and intent to deceive;

1 C. That the Court find this case is exceptional under 15 U.S.C. § 1117(a);

2 D. That the Court issue a preliminary and permanent injunction enjoining
 3 DEFENDANTS, their successors, officers, agents and employees, and anyone
 4 acting in concert with or at the behest or direction of them, from engaging in fraud
 5 schemes to obtain property from CISCO, including making false representations in
 6 order to receive replacement parts pursuant to CISCO's SMARTnet program.

7 E. That the Court issue a preliminary and permanent injunction enjoining
 8 defendant and its agents, servants, employees, and attorneys and those persons in
 9 active concert or participation with them:

10 a. From using any of CISCO's Trademarks or any mark similar
 11 thereto in connection with the sale of any unauthorized goods or the
 12 rendering of any unauthorized services;

13 b. From using any logo, trade name or trademark which may be
 14 calculated to falsely represent or which has the effect of falsely
 15 representing that the services or products of Defendants or of third
 16 parties are sponsored by, authorized by, or in any way associated with
 17 CISCO;

18 c. From infringing CISCO's registered trademarks;

19 d. From otherwise unfairly competing with CISCO;

20 e. From falsely representing itself as being connected with CISCO
 21 or sponsored by or associated with CISCO or engaging in any act
 22 which is likely to falsely cause the trade, retailers and/or members of
 23 the purchasing public to believe that Defendants are associated with
 24 CISCO;

25 f. From using any reproduction, counterfeit, copy, or colorable
 26 imitation of CISCO's Trademarks in connection with the publicity,
 27 promotion, sale or advertising of goods sold by Defendants including,
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without limitation, computer hardware, software, switches, routers, electronics, telecommunications, or other communications equipment bearing a copy or colorable imitation of CISCO's trademarks; and;

g. From affixing, applying, annexing, or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent such goods as being those of CISCO and from offering such goods in commerce;

F. That CISCO be awarded compensatory damages in an amount to be determined at trial;

G. That CISCO be awarded consequential damages in an amount to be determined at trial;

H. That CISCO be awarded punitive and exemplary damages in an amount to be determined at trial;

I. That CISCO be awarded statutory damages;

J. That CISCO be awarded treble damages;

K. That CISCO be awarded pre-judgment interest;

L. That CISCO be awarded its costs incurred in this action, including any attorneys' fees to which CISCO may be entitled;

M. That DEFENDANTS be required to restore all money and property which have been acquired by means of unfair competition and trademark infringement.

N. That DEFENDANTS be required to account for all profits and damages resulting from DEFENDANTS' respective infringing activities and that the award to CISCO be increased as provided for under 15 U.S.C. § 1117; and

O. That CISCO be granted such other and further relief as the Court deems just and proper.

LAW OFFICES
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DATED: April 22, 2014

Respectfully submitted,

SIDEMAN & BANCROFT LLP

By: /s/Jeffrey C. Hallam
Jeffrey C. Hallam
Attorneys for CISCO SYSTEMS, INC. and
CISCO TECHNOLOGY, INC.

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JURY DEMAND

Pursuant to Civ. L.R. 38-1 and Fed. R. Civ. Proc. 38, Plaintiffs CISCO SYSTEMS, INC. and CISCO TECHNOLOGY, INC. hereby demand trial by a jury on all issues herein so triable.

DATED: April 22, 2014

Respectfully submitted,

SIDEMAN & BANCROFT LLP

By: /s/Jeffrey C. Hallam
Jeffrey C. Hallam
Attorneys for CISCO SYSTEMS, INC. and
CISCO TECHNOLOGY, INC.

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